

Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554



Re: *Notice of Ex Parte Presentation in ET Docket No. 04-151*

Dear Ms. Dortch:

On January 31, 2005, Harold Feld of Media Access Project (representing the Champaign Urbana Wireless Network) and Ben Scott of Free Press (collectively, MAP, *et al.*) met with Commissioner Kathleen Abernathy and Jennifer Manner, Senior Counsel to Commissioner Abernathy, to discuss the use of unlicensed devices in the 3650-3700 MHz band.

MAP, *et al.* reiterated its position on the First Amendment value of unlicensed devices. They expressed concern that certification and other regulations that would be considered a reasonable "cost of doing business" could make non-commercial deployment for community networks impossible.

MAP, *et al.* also expressed concerns that, particularly in densely populated urban environments, high-power unlicensed devices could cause interference with mesh networks using low-power devices. At the same time, NAF, *et al.* argued that a "licensing lite" regime patterned after the 79-90 GHz band would also create problems of entry for those seeking the band. In particular, NAF, *et al.* stated that it would be disastrous to create a "first in time, first in right" regime that protected the first entrant from interference from any new entrants or from low power devices. Such a scheme would give the first person to deploy in a geographic area the ability to dictate entry conditions for new entrants and act like a standard geographic licensee, but without constraints and without returning revenue to the public. Worse, the "first in time" would have incentive to maximize coverage area and to remain broadcasting at maximum power 24/7 to squat on the maximum amount of spectrum.

MAP, *et al.* suggested several possible ways to mitigate interference concerns: 1) require registration of high-power users, but rely upon good faith negotiation rather than either spectrum coordinators or "first in time, first in right" licensing; 2) limit high power to rural areas, since devices will have geographic awareness to protect incumbents, devices can be limited in power based on population density; 3) require that high-power devices use only pencil-thin beams similar to those used in 79-90 GHz, and be limited to point-to-point links; 4) require interference avoidance techniques to be built into devices in addition to "listen before talk" that would require devices to cooperate better.

MAP, *et al.* observed that the Commission could encourage market negotiation while sending a signal to the market to cooperate by (a) stating that users should seek to coordinate on a voluntary basis; (b) emphasize that Section 324 of the Act requires that all spectrum users use "minimum amount of power necessary to carry out the communication desired" and that Section 333 prohibits "willful or malicious" interference with any signal authorized by the Commission, so that

manufacturers and users will not market systems designed to interfere with others and users will not configure systems to interfere with others; and (c) reminding private parties that the Commission views unlicensed as an experiment and if parties cannot use the spectrum efficiently the Commission will return to exclusive licensing. MAP, *et al.* also agreed that technological solutions are always preferable to rules or mandatory proceedings.

MAP, *et al.* emphasized that they did not wish to see only low-power unlicensed devices in the band. Rural systems such as the Tribal Digital Village need high-power to provide necessary backhaul and to reach geographically dispersed populations. At the same time, the concentration in urban settings could make interference in urban areas potentially destructive of valuable use in the band. An unregulated omni-directional antenna, operating with the same freedom as a 1-watt device in 2.4 GHz, could create blanket interference for mesh networks and for low-power portable devices. While interference avoidance will continue to improve, the Commission has a responsibility to manage the growth of unlicensed devices so that interference avoidance technology can hope to keep pace with demand for use.

In accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206, this letter is being filed with your office. If you have questions, please do not hesitate to contact me.

Respectfully Submitted,
Harold Feld
Senior Vice President

CC: Commissioner Abernathy
Jennifer Manner